

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 732 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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NITABEN MANHARBHAI RABHERU

Versus

KESHOD MUNICIPALITY

Appearance:

1. Special Civil Application No. 732 of 2002
MS HETAL M PAVAR for Petitioner No. 1
MS SEJAL K MANDAVIA for Respondent No. 1
Ms MANISHA LAVKUMAR, AGP for Respondent No. 2
RULE SERVED BY DS for Respondent No. 3
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 10/05/2002

ORAL JUDGEMENT

What is challenged in this petition under Article
226 of the Constitution is the order dated 11.1.2002
(Annexure "A") passed by the Collector, Junagadh in Case
No. 10 of 2001 under sub-section (5) of Section 35 of
the Gujarat Municipalities Act, 1963 (hereinafter

referred to as "the Act").

2. The petitioner herein was elected as a Member of the Keshod Municipality. The election was held on 2.1.2000 and the petitioner was declared as elected on 4.1.2000. On 14-2-2001, the petitioner filed an application before the Collector, Junagadh making a grievance that the President of the Municipality had got up the resignation alleged to have been given by the petitioner on 14.12.2000 though the petitioner had not given any such resignation. The Collector considered the statements of the President of the Municipality, the Chief Officer of the Municipality and the petitioner and held that under the provisions of sub-section (5) of Section 35 of the Act, the dispute was required to be raised within 30 days from the date on which the resignation was accepted. Since the resignation was accepted by the President on 14.12.2000, it came into force on the same day and, therefore, the dispute was required to be raised within 30 days from that day, but the petitioner raised the dispute before the Collector only on 14.12.2001 and, therefore, the dispute was not maintainable. The Collector further held that the petitioner has not produced any evidence to prove that the petitioner had not resigned and that looking to the evidence, the petitioner had given resignation without date and the said resignation was accepted by the President of the Municipality on 14.12.2000. Aggrieved by the aforesaid order, the petitioner has filed the present petition.

3. At the hearing of this petition, Ms Hetal Pawar, learned counsel for the petitioner has challenged the impugned order on the following grounds :-

(i) The petitioner raised the dispute before the Collector by filing an application under Section 35(5) of the Act on 14.2.2001 on the ground that she had come to learn on 25.1.2001 that the President was treating the petitioner as having resigned and, therefore, she had made an application before the Collector on 26.1.2001 (as admitted by Mr MD Patel, the then President of the Municipality in his additional reply dated 6-8-2001) and when she made further enquiries and when she came to learn about the alleged resignation allegedly accepted on 14.12.2000, the petitioner challenged the same. However, instead of deciding the main dispute whether the resignation was genuine and voluntary and whether it was really given by the petitioner on

14.12.2000, the Collector dismissed the petitioner's application on the ground that the dispute was raised after the prescribed time limit of 30 days. It is submitted that when the resignation itself was not genuine or voluntary, the 30 days' time limit would run from the day when the petitioner came to know about the alleged resignation.

- (ii) The Collector erred in holding against the petitioner on the ground that the petitioner has not produced any evidence to prove that the petitioner had not resigned. No party can be expected to prove the negative. It was sufficient that the petitioner pointed out the circumstantial evidence or intrinsic evidence on record to show that the resignation was concocted and that once the petitioner discharged her onus, it was for the President to discharge his onus and to prove that the petitioner had tendered resignation which was genuine and voluntary.
- (iii) Even though the alleged resignation was allegedly given and accepted on 14.12.2000, the petitioner was served with a notice of the meeting of the general body of the Municipality scheduled to be held on 20.1.2001. That notice was issued on 5.1.2001. If the petitioner had resigned from the office of the councillor on 14.12.2000 and the resignation was accepted on that day, the petitioner would not have been served with such notice of the meeting.
- (iv) The fact that the councillors had an apprehension that though they had not tendered the resignations, but Mr MD Patel (who was the then President of the Municipality) had lost the support of the majority and, therefore, he was likely to use the got up resignations, was already expressed by as many as 24 councillors of the Municipality on 13.11.2000 by submitting an application/representation to the Collector, Junagadh, which is also referred to in the impugned order.
- (v) The body of the alleged resignation letter and the signature on the resignation letter are in different hand writing and the contents and tenor of the resignation letter give intrinsic indication that this was not a resignation which any councillor would give in the normal course.

4. On the other hand, Ms Manisha Lavkumar, learned AGP for the Collector, Junagadh and Ms Sejal Mandavia, learned counsel for the Municipality have opposed the petition and submitted as under :-

- (i) The Collector has given a finding on a question of fact that the petitioner had submitted her resignation on 14.12.2000 and, therefore, this Court would not interfere with the same in a petition under Article 226 or 227 of the Constitution.
- (ii) The fact that the petitioner had submitted her resignation and the President had accepted the same was also informed to the State Election Commission on 19.1.2001. Reliance is placed on the Dy. Collector's letter dated 16.2.2001 to the Collector, (a copy of which is placed on record) making a frame to the said communication dated 19-1-2001.
- (iii) Merely because the petitioner was given a notice dated 5.1.2001 for the meeting to be held on 20.1.2001, it does not clinch the issue in the petitioner's favour because in any case the petitioner did not remain present at the meeting held on 20.1.2001, she would have remained present at the said meeting, if she had not resigned.

5. Having heard the learned counsel for the parties, the Court finds that there is substance in the submissions made by the learned counsel for the petitioner. It is true that sub-section (5) of Section 35 of the Act stipulates the time limit of 30 days for raising a dispute about alleged resignation of a Councillor but when the dispute raised by the Councillor is that she had not tendered any resignation, the time limit of 30 days would naturally run from the date on which the Councillor came to know about the alleged resignation. In the instant case, the alleged resignation letter alleged to have been tendered by the petitioner to the President and accepted by the President on 14-12-2000 did not bear any date. Earlier on 13-11-2000, as many as 24 Councillors of the Municipality had submitted a representation to the Collector, Junagadh apprehending that the then President of the Municipality had lost majority and was likely to use got up resignations; hence when the petitioner came out with the case that for the first time she came to know about the

alleged resignation on 25-1-2001 and she moved the Collector on 26-1-2001 and thereafter filed an application under Section 35(5) of the Act on 14-2-2001, the Collector could not have dismissed the application on the ground of limitation.

6. Similarly, the Collector erred in throwing the burden on the petitioner to prove that she had not resigned. In the background of the representation dated 13-11-2000 submitted by as many as 24 Councillors to the Collector alleging got up resignations likely to be relied upon by the then President, the Collector ought to have scrutinised the resignation letter with due care and caution. A photostat copy of the alleged resignation letter was shown to the Court for perusal.

A bare perusal of the contents of the resignation letter indicates that when a Councillor of the Municipality would resign from office in the normal course, the tenor of the resignation would not be like the one in the alleged resignation letter. In the first place, the handwriting of the body of the resignation letter is of a different person and not that of the signatory. More importantly it is only when some other person is procuring resignation that such kind of language would be used in the body of the resignation letter. The language of the resignation letter, therefore, makes the claim of the then President of the Municipality that the resignation was genuine and voluntary very doubtful. The background of the aforesaid letter dated 13-11-2000 and the aforesaid intrinsic evidence in the resignation letter ought to have prompted the Collector not to rely on the resignation as voluntary and genuine. These facts are also required to be considered in conjunction with another fact that when the notice was issued on 5-1-2001 for the general body meeting of the Municipality scheduled on 20-1-2001, the notice was sent to the petitioner also. If the petitioner had resigned from the office of Councillor on 14-12-2000, the President or the Chief Officer of the Municipality would have certainly informed the Collector's office about the said resignation and, therefore, the very fact that such notice was sent to the petitioner also is an indication of the probability that till 5-1-2001, the petitioner had not tendered her resignation.

7. In light of the aforesaid facts and circumstances, the finding given by the Collector that the petitioner had given resignation to the President of the Municipality on 14-12-2000 voluntarily and that the

same was accepted by the President on 14-12-2000 is not supported by any independent evidence but on the contrary, the said finding runs counter to the material on record and, therefore, the impugned order is vitiated by non-application of mind and deserves to be quashed and set aside.

8. The petition is accordingly allowed. The impugned order dated 11.1.2002 passed by the Collector, Junagadh (Annexure A) is quashed and set aside. The respondents are directed not to treat the petitioner as having resigned as a Councillor and are directed to treat the petitioner as continuing to be a councillor of Keshod Municipality.

Rule is made absolute to the aforesaid extent with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)
sundar/-